IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 7355 of 2005

Between:

K. Maisaiah, S/o Bujjaiah,
Sarpanch OF Venkiraial VILLAGE,
Bibinagar Mandal, Nalgonda District … Petitioner

AND

1 The District Collector, Nalgonda
2 The District Panchayat Officer, Nalgonda
3 The Divisional Panchayat Officer, Bhongir, Nalgonda Distirct
4 Cheruku Kumar Goud, S/O. Narasimha, UpaSarpanch,
Venkirial village, Bibinagar mandal, Nalgonda dist.

R.4 is impleaded as per Court Order dated 26.04.2005
in W.P.M.P.No.11091 of 2005. … Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ of Certiorari or any other appropriate Writ calling for the records pertaining to proceedings No. 195/2003/A1(Panchayat), dt 25-03-2005 passed by respondent NO. 1 and quash the same holding the same as illegal, arbitrary, in violation of principles of natural justice, total non application of mind and against the provisions of section 249 of A.P. Panchayat Raj ACt, 1994.

Counsel for the Petitioner: MR.A.RAJASEKHAR REDDY

Counsel for the Respondents 1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEVELOPM ENT

Counsel for the Respondent No.4: Mrs. S.Nanda

The Court made the following :

ORDER:

–

This Writ Petition has been filed by one K.Maisaiah with a prayer to issue a Writ of Certiorari or any other appropriate writ calling for records pertaining to proceedings No.195/2003/A1 (Panchayat), dated 25.03.2005 passed by the District Collector, Nalgonda and quash the same holding the same as illegal, arbitrary and in violation of principles of natural justice, total non-application of mind and against the provisions of Section 249 of the A.P. Panchayat Raj, 1994 or pass any appropriate order.

The petitioner is the Sarpanch of Venkiraial village, Bibinagar mandal, Nalgonda district. A show-cause notice was issued to him on 29.01.2005 by the District Collector, Nalgonda-first respondent, making certain allegations. The petitioner submitted explanation to the show-cause notice. Thereafter, the District Collector-first respondent called for findings from the Divisional Panchayat Officer, Bhongir-third respondent on the allegations levelled against the petitioner. Basing on the findings recorded by the Divisional Panchayat Officer-third respondent, the first respondent proceeded to remove the petitioner as Sarpanch of Venkirial village by invoking powers under Section 249(1) of the A.P.Panchayat Raj Act, 1994, under the impugned order. Hence, the Writ Petition.

Respondents 1 to 3 filed counter affidavit. One K.Vijayanand sworn to it. It is stated in the counter affidavit that the District Collector, Nalgonda-first respondent considered the material brought on record and passed the impugned order by invoking powers conferred to him under Section 249(1) of the A.P. Panchayat Raj Act, 1994.

Fourth Respondent is Upa Sarpanch of Venkirial village, on whose complaint, proceedings have been initiated against the petitioner-Sarpanch.

Heard the counsel for the petitioner and the Government Pleader for

Panchayat Raj and Rural Development appearing on behalf of the respondents 1 to 3, and Mrs. S.Nanda, learned counsel for the fourth respondent.

Two principal contentions have been urged by the learned counsel for the petitioner. Firstly, the report of the Divisional Panchayat Officer, Bhongir-third respondent, dated 17.11.2004, which formed basis for issuance of show-cause notice, has not been furnished to the petitioner; and secondly, the District Collector-first respondent has not formed his own opinion and that he simply endorsed the findings recorded by the Divisional Panchayat Officer, and therefore, there is non-application of mind by the first respondent.

The learned Government Pleader appearing on behalf of the respondents 1 to 3 submits that the report of the Divisional Panchayat Officer-third respondent dated 17.11.2004 has been furnished to the petitioner along with the show-cause notice dated 29.01.2005. He refers to the show-cause notice wherein it is stated that a copy of the report of the Divisional Panchayat Officer-third respondent has been enclosed to it. Such is the situation, the petitioner can not be permitted to contend that the report of the Divisional Panchayat Officer has not been furnished to him.

The only other ground survives is non-application of mind by the District Collector in exercising powers under Section 249(1) of the A.P. Panchayat Raj Act, 1994. The learned counsel for the petitioner submits that under Section 249(1) of the A.P. Panchayat Raj Act, 1994, the District Collector has to form his own opinion with regard to the misconduct alleged against the petitioner-Sarpanch, and since the District Collector has simply endorsed the findings recorded by the Divisional Panchayat Officer, there is no application of his mind.

In support of his submissions, he relied on a decision of a Divisional Bench of our High Court in *D.Sathi Reddy v. Commissioner,*

Panchayat Raj, A.P., Hyderabad & others wherein it has been held that the competent authority should consider after due application of mind that the factors mentioned in clauses (i) to (iv) of sub-sections (1) of Section 249 of the A.P. Panchayat Raj Act, 1994 or either of them exists, then only the competent authority can pass an order removing the Sarpanch and the existence of the factors of either of them in the clauses (i) and (iv) is essential and mandatory precondition for exercise of power of removal.

Sub section(1) of Section 249 of the Act is as follows:

"249. Powers of Government to remove Sarpanch, President or Chairman, etc.:-

1. if in the opinion of the District Collector, the Sarpanch or the Upa-Sarpanch and in the opinion of the Government the President or the Vice President or as the case may, the Chairman or the Vice-Chairman,--

   i. willfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or

   ii. abused his position or the powers vested in him; or

   iii. is guilty of misconduct in the discharge of his duties; or

   iv. persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body or has become incapable of such performance; the Collector or as the case may be, the Government, may remove such Sarpanch or Upa-Sarpanch, President or Vice-President or as the case may be, the Chairman or the Vice-Chairman after giving him an opportunity for explanation."

A reading of the sub section (1) of Section 249 shows that a

Sarpanch can be removed when:

a. he has wilfully disobeyed the orders of the Government:

b. he is guilty of misconduct in discharge of his duties;

c. he abused the powers vested in him under the Act;

d. he failed to perform his functions and duties to the detriment of the Panchayat and;or

e. he has become incapable of performing his functions and duties.

The impugned order is explicit that the District Collector simply endorsed the findings recorded by the Divisional Panchayat Officer. The last seven paragraphs of the impugned order read as follows:

> "Hence, all the 11 charges are found to be proved basing on the above enquiry report.
>
> For the above reasons Shri K.Maisaiah, Sarpanch, Grampanchayat Venkirial village is removed as per Section 249(1) of the A.P. Panchayat Raj Act, 1994, and the same will come into effect immediately.
>
> Hence, Mandal Development Officer, Bibinagar, is directed to recover the mis-utilized amount from Shri K.Maisaiah, Sarpanch, Under Section 265 of the A.P. Panchayat Raj Act.
>
> Hence, it is directed that the Shri K.Maisaiah, Sarpanch, is directed to hand over the complete charge to Shri Charaku Kumar Goud, Upa-sarpanch immediately and send the report.
>
> Sri Ch. Kumar Goud, Upa-sarpanch is directed to take over complete charge from Shri K.Maisaiah, Sarpanch immediately and the send compliance report.
>
> Mandal Parishad Development Officer, Bibinagar, is directed to see that this proceedings are implemented and send a report.
>
> The letter no.94/2004-B (AN), dated 05.03.2005 issued by the

Divisiional Panchayat Officer, Bhongir, is sent to Sarpanch, Grampanchayat, Venkirial."

The District Collector except recording the explanation of the Sarpanch and findings of the Divisional Panchayat Officer, has not referred to any documents nor recorded any reasons for forming his own opinion. Therefore, I am in doubt to conclude that the impugned order suffers from infirmity of non-application of mind by the District Collector-first respondent.

In the result, the Writ Petition is allowed setting aside the impugned order No.195/2003/A1 (Panchayat), dated 25.03.2005 of the first respondent. The District Collector-first respondent is at liberty to pass fresh orders after giving due opportunity to the petitioner. No costs.

13.07.2005

DRK

Issue CC in two days.

BO

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice

On Wednesday the thirteenth day of July two thousand and five.

…Registrar

Copy to:

1 The District Collector, Nalgonda

2 The District Panchayat Officer, Nalgonda

3 The Divisional Panchayat Officer, Bhongir, Nalgonda Distirct

4 Two CCs to the G.P. for Panchayat Raj and Rural Development, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.